

REMARKS

The status of the claims is: Claims 1-48 and 50-95 and pending in the current application. Claims 49 and 96 are cancelled. Claims 6, 8-9, 11, 14, 55, 59-64, 66-67 and 76 are withdrawn with amendments. Claims 45-48 and 94-95 are withdrawn.

Applicant has amended dependent claims 2-44 and 51-93 to recite "A smokeable filler" to correct an inadvertent recitation of "A smoking", to make each dependent claim consistent with either the independent claim 1 or the independent claim 50 from which each of said dependent claims depends.

Applicant's attorney wishes to thank Examiner Felton for his clarifying explanation regarding the species/sub-species election requirement, in a telephone interview held in response to Applicant's attorney's call of September 28, 2009.

In response to the Examiner's restriction requirement, Applicant hereby elects to prosecute the invention of Group I. In addition, pursuant to the Examiner's explanation, Applicant further elects the species/subspecies identified as follows:

- a. Amount of foaming agent: 30-95% (claim 4)
- b. Crosslinking agent: calcium sulphate (claim 7)
- c. Amount of cross-linking agent: 1-11% (claim 13)
- d. Non-alginic foaming agent: hydroxypropyl cellulose (claim 23)
- e. Non-foaming agent capable of forming chemical cross-linkages: sodium alginate (claim 26)
- f. Aerosol generating material: glycerol (claim 33)
- g. Inorganic filler: chalk (claim 37)
- h. Flavour: menthol (claim 39)
- i. Fibrous material: tobacco (claim 42)
- j. Other additive: binder (claim 44)

This election is made with traverse for the following reason. It is noted that the Examiner has characterized Group 1 as being drawn to a “smoking material”. Actually claim 1 of Group 1 is drawn to a “smokeable filler material”. As discussed above, the claims dependent from claim 1 have been amended to recite the same term, i.e., “smokeable filler material”.

Similarly, the Examiner has characterized Group VI as being drawn to a “smokeable material” whereas in fact independent claim 50 thereof is drawn to a “smokeable filler material”, identically recited as in claim 1. Similarly the claims dependent from claim 50 have been amended to recite the same term, a “smokable filler material” as also discussed above.

A review of claims 1 and 50 will reveal that each is drawn in general to a smokeable filler material comprising a foaming agent, a cross-linking agent and an agent capable of forming chemical cross-linkages. The differences between claim 1 and claim 50 are differences in scope only. Accordingly it is respectfully submitted that Group I and Group VI relate to a single generally inventive concept and should be classified as a single invention for purposes of restriction.

Applicant accordingly submits that claims 1-5, 7, 10, 12, 13, 15-44, 50-54, 56-68, 65, 68-75, and 77-93 read on the elected invention/species/sub species.

Applicant also notes that the Examiner has found claims 1-3 to be generic.

Accordingly in view of Applicant’s election herein, an action on the merits is respectfully requested.

The Examiner is invited to phone the undersigned attorney if any further issues require

discussion.

Respectfully submitted,

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